

Order Sheet  
IN THE HIGH COURT OF SINDH, KARACHI

C.P. No.S-190 of 2025

[ Khalid Mehmood v. Mst. Naseem Akhtar & another]

Petitioner: Through Mr. Assad Jahangir Shah, Advocate.

Date of Hearing & order: 18.03.2025

**ORDER**

**Arshad Hussain Khan, J;** The petitioner through instant constitutional petition has challenged the judgment dated 29.01.2024 passed by IVth Additional District Judge, Karachi-East in FRA No.171/2024 whereby order dated 23.07.2024 passed by the IInd Rent Controller, Karachi-East in Rent Case No.264/2021 passed on application under Section 16(2) SRPO, 1979 was maintained and FRA was dismissed with direction to the petitioner to vacate the demised premises within 60 (sixty) days.

2. Concisely the facts giving rise to the present petition are that the petitioner is tenant in respect of Shop No.04 at Ground Floor, constructed on Plot No.1/407, Shah Faisal Colony, Karachi (**demised premises**) while the respondent No.1 after having been purchased the same got served a notice under Section 18 of SRPO upon him on 11.08.2019 but he did not pay any heed and committed default in payment of monthly rent w.e.f. 11.08.2019, thus, the rent case bearing No.264/2021 was filed on two grounds viz. **default** and **personal bonafide need**. In the rent case respondent No.1 also filed application under Section 16(1) of Sindh Rented Premises Ordinance, 1979 seeking deposit of arrears of rent of demised premises from 01.08.2019 upto date @ Rs.20,000/- per month and future monthly rent, which was allowed vide order dated 06.01.2023 and the petitioner was directed to deposit rent at the rate of Rs.20,000/- per month before the Trial Court on or before 10<sup>th</sup> of English each calendar month regularly without default till decision of the rent case and the petitioner was also directed to deposit the arrears of monthly rent w.e.f. 01.09.2019 within Thirty (30) days. However, when the petitioner failed to comply with aforementioned order, respondent No.1 filed Application under Section 16(2) of SRPO, 1979, which was allowed vide order dated 23.07.2024 and the petitioner was directed to vacate the demised premises and deliver its peaceful possession to the respondent No.1 within sixty (60) days from the date of said order, which has been assailed by filing instant constitutional petition.

3. Learned counsel for the petitioner contends that impugned order is bad in law as well as contrary to the facts of the case as the petitioner purchased the

said property from previous owner namely Abdul Jabbar through sale agreement and got possession of the premises. He further contends that the impugned order is a result of non-reading and misreading of the material available on record thus caused great injustice to the petitioner. It is also contended that the learned First Appellate Court did not decide the case on merits and dismissed the FRA mainly on the point of limitation. He further contends that the impugned order has been passed without considering the objections filed by the petitioner, as such, same is not sustainable under the law and liable to be set-aside. He also contends that the previous owner has illegally transferred the property in the name of respondent No.1 whereas the petitioner is the actual owner of the property and in this regard a Civil Suit bearing No.1169/2022 has been filed for declaration, specific performance, cancellation, permanent injunction and damages, which is pending adjudication. He lastly prays for setting-aside the impugned judgment.

4. Heard learned counsel for the petitioner and perused the record carefully.

5. The jurisdiction conferred under Article 199 of the Constitution is discretionary with the objects to foster justice in aid of justice and not to perpetuate injustice<sup>1</sup>. It may also be observed that the ambit of a writ petition is not that of a forum of appeal, nor does it automatically become such a forum in instances where no further appeal is provided<sup>2</sup>, and is restricted inter alia to appreciate whether any manifest illegality is apparent from the order impugned. It is also well settled that where the fora of subordinate jurisdiction had exercised its discretion in one way and that discretion had been judicially exercised on sound principles the supervisory forum would not interfere with that discretion, unless same was contrary to law or usage having the force of law.

6. It is also well settled principle of law that the High Court in exercise of its constitutional jurisdiction is not supposed to interfere in the findings on the controversial question of facts, even if such findings are erroneous. The scope of the judicial review of the High Court under Article 199 of the Constitution in such cases, is limited to the extent of mis-reading or non-reading of evidence or if the findings are based on evidence which may cause miscarriage of justice but it is not proper for this Court to disturb the findings of facts through reappraisal

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<sup>1</sup> Muslim Commercial Bank Ltd. through Attorney v. Abdul Waheed Abro and 2 others [2015 PLC 259]

<sup>2</sup> Shajar Islam v. Muhammad Siddique [PLD 2007 SC 45] & Arif Fareed v. Bibi Sara and others [2023 SCMR 413].

of evidence in writ jurisdiction or exercise this jurisdiction as substitute of revision or appeal.

7. A perusal of the orders passed by the Rent Controller shows that the application under Section 16(1) SRPO, 1979 filed in Rent Case No.264/2021 by the respondent No.1 was allowed by the Rent Controller with directions to deposit monthly rent regularly before the Court and its arrears vide order dated 06.01.2023 and upon non-compliance of the said order the respondent No.1 filed Application under Section 16(2) SRPO, 1979, which was also allowed by the Rent Controller with directions to the petitioner to deliver possession of the demised premises to the respondent No.1 order vide order dated 23.07.2024. While passing aforesaid order the Rent Controller has taken into account all the documents including registered Sale Deed of the subject plot, so also Notice under Section 18 of SRPO for change of ownership served upon the petitioner and annexed by the respondent No.1 with rent case as well as agreement of sale filed by the petitioner with written statement and discussed each and every aspect of the matter in detail specially the default committed by the petitioner as well as non-compliance of former order dated 06.01.2023.

8. A glance at the impugned judgment reveals that the Appeal was filed beyond the limitation period and on the pointation of respondent No.1's counsel during arguments, counsel for the petitioner filed a hand written application for condonation of delay without any affidavit and even no ground was agitated for condonation of such delay, as such, the FRA was dismissed being time barred as well as on merits and the order of the Rent Controller dated 23.07.2024 was maintained.

9. Insofar as the contention raised by the petitioner's counsel with regard to the pendency of the Civil Suit filed by the petitioner is concerned, it appears that the petitioner filed his suit after receiving notice of the rent case filed by the respondent No.1. Moreover, it is essential to reaffirm a settled principle of law that a tenant cannot maintain occupancy of rented premises merely because he/she has initiated a suit for declaration. In instances where the tenant asserts ownership of the property, the legally mandated procedure requires the tenant to vacate the premises, pursue the civil suit, and, upon a favorable judgment by the competent court, regain possession of the property. Reference may be made to the case of *Rehmatullah v. Ali Muhammad & another* [1983 SCMR 1064] wherein it has been held that:-

*“ . . . It is settled principle of law that if a tenant denies the propriety rights of the landlord then he is bound to first of all deliver the possession of the premises in question and then to contest his propriety rights in the property and if ultimately he succeeds in getting relief from*

*the court and decree is passed in his favour then he can enforce the same according to law with all its consequences . . . ”*

Similarly, in the case of *Muhammad Nisar versus Izhar Ahmed Shaikh and others* [PLD 2014 SC 347], it has been ruled that:-

*“ . . . Per settled law in such circumstances when the tenant puts up a plea in an ejectment application that he had purchased the property then he has to file a suit for his remedies (which has been done) and vacate the premises and thereafter if he succeeds he would be entitled to take possession of the premises again . . . ”*

The Supreme Court in the case of *Nasir Khan v. Nadia Ali Butt and others* [2024 SCMR 452], while delving on the similar proposition has observed that:-

*“...the inescapable conclusion is that a tenant remains a tenant, he cannot prolong his occupation by exercising his right of being subsequent purchaser unless so held by the court of competent jurisdiction. The reasons behind is that he has no status to justify his possession and if he denies the relationship of landlord and tenant he will be known to be an illegal occupant.*

*12. It is trite law that a person cannot remain in occupation of rented premises simply because he asserts to be the owner of the rented premises and has instituted a suit for declaration in this regard.”*

10. There appears no illegality and / or infirmity in the impugned judgment / orders, which could warrant interference by this Court. Learned counsel for the petitioner has also not been able to point out any misreading and non-reading of the material by the Courts below.

11. In the circumstances, the present constitutional petition being devoid of merits is dismissed *in limine* alongwith pending applications.

JUDGE